

March 11, 2003

The Hon. Don Nickles  
Chairman  
Committee on the Budget  
United States Senate  
Washington, D.C. 20510

The Hon. Kent Conrad  
Ranking Member  
Committee on the Budget  
United States Senate  
Washington, D.C. 20510

Dear Chairman Nickles and Senator Conrad:

We are responding to your request that the Views and Estimates of this Committee on the President's Fiscal Year 2004 ("FY2004") budget request for Indian programs be submitted to the Committee on the Budget.

On February 3, 2003, the President submitted his budget request which totals \$2.229 trillion, includes \$782 billion in discretionary spending, and provides an overview of the President's spending priorities for the next fiscal year.

#### **I. Federal Spending Trends FY1975-2004**

As it has done in previous years, the Committee has called upon the Library of Congress' Congressional Research Service (CRS) to prepare an analysis of Federal spending trends in programs and services for or affecting Natives (AI/AN), and a comparative analysis of spending patterns for other Americans.

The Committee has asked the CRS to produce a report documenting Federal spending trends for FY1975-2004. <sup>1</sup>

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<sup>1</sup> The Committee will submit the CRS Memorandum entitled *Indian-Related Federal Spending Trends* as it is made available.

## II. Profile of Indian Country

**In General.** There are 562 Federally-recognized tribes in the U.S., with 40% of tribes located in the State of Alaska. The 2000 census data indicate there are 2.5 million <sup>2</sup> Natives in the U.S., with over 57% living in urban areas and the remainder residing on Indian reservations or in rural areas, sometimes hundreds of miles from the nearest urban area. Approximately 4.1 million census respondents identified themselves in the AI/AN racial category or ancestry and also claimed other races or ancestries. Many of these individuals are or could be eligible for Federal services.

The U.S. has a unique historical and legal relationship with Native people, which serves as the basis for the Federal trust obligations.

The government-to-government relationship is a well-settled principle of Federal Indian law and is reflected in the Constitution and treaties, executive orders, statutes, Federal court decisions, and course of dealing. There are also moral components to the relationship which has been described as a "mutuality of obligations" grounded in the cession of millions of acres of land by tribes to the U.S. in return for peace, protection of tribal sovereignty, and promises to provide a variety of programs and services.

Native people in the U.S. continue to rank at or near the bottom of nearly every social, health, and economic indicator, as compared to all other citizens.

Natives continue to suffer the highest rates of unemployment and poverty, live in substandard housing, have poor health, receive an inadequate education, and contend with disintegrating social systems, all of which erode both the quality and dignity of life in Native communities.

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<sup>2</sup> The 2000 Census also found that 4.12 million persons indicated they were AI / AN in combination with one or more races.

The budget request continues the implementation of the President's Management Agenda by evaluating an agency's performance and targeting Federal funding to those programs and services with a demonstrated record of effectiveness.

The Committee agrees that improving effectiveness in the Indian agencies is important but also recognizes that these agencies have witnessed a pattern of under-funding for decades and that, in part at least, increased resources are needed to alleviate the dire conditions in Native America and address the basic human needs Native people.

**Education.** The educational attainment for Native youth is deficient compared with other groups in the U.S. For example, Native youth receive fewer high school and college degrees. An aggravating factor in educational achievement is the continued inability of the Federal government to ensure adequate, safe and clean educational facilities conducive to learning.

Despite a multi-year effort to reduce the queue of Indian school facilities in need of replacement, as of 2002, there remains a massive backlog in school facilities needs. The Committee believes that Federal and tribal funds can be leveraged to construct additional facilities through the use of innovative financing mechanisms. The Committee views both the ongoing School Construction Demonstration Program and recent legislative proposals to authorize the issuance of tribal school construction bonds as innovative.

**Energy.** Indian tribal lands contain significant energy resources and have an important role to play in the development of Indian economies as well as a sound national energy policy.

Notwithstanding this potential, the vast majority of Native economies are moribund and lack the basic physical infrastructure necessary to provide the basic amenities to their citizens or to provide the building blocks of business and economic development. Indian tribal energy production --- including oil, gas, coal, geothermal, wind and other resources

--- is significant and could increase in the future if financial, technical, and scientific assistance is made available.

There is also unmet demand for electricity in Native communities: a recent Department of Energy report estimated that 14.2% of all Native homes on reservations have no access to electricity compared to just 1.4% of all U.S. households. With unemployment averaging 43% and poverty rampant, Native communities are particularly sensitive to high energy prices.

**Employment and Income.** Given the near-complete absence of a private sector in most Native communities, 31.2 % of Natives live in poverty. In the U.S. today, the unemployment rate is 5.8%, whereas the rate for Natives is near 50% --- twice that of the national unemployment rate in the Great Depression. The earning capacity of Natives also lags behind that of other Americans: for every \$100 earned by the average American family, an Indian family earns \$62. The *per capita* income for Indians averages \$8,284. <sup>3</sup>

**Health Status.** Most striking are the health statistics involving Native people: diabetes, tuberculosis, alcoholism, Fetal Alcohol Syndrome (FAS) and increasingly, AIDS, plague Native communities at rates far and above the incidence for other Americans.

**Housing.** Census data shows that 18% of all Native households are "severely crowded" as compared with 2% for non-natives, with 90,000 Indian families homeless or under-housed. One of every five Indian houses lacks complete plumbing facilities. Because trust land is not available to secure mortgage financing, Natives rely to a greater degree on Federal housing financing.

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<sup>3</sup> U.S. Bureau of the Census, 1990 Census of Population, "Characteristics of American Indians by Tribe and Language," 1990 CP-3-7.

### III. Funding Priorities

The Committee has historically supported the overall budget requests for Indian-related programs, and in many instances urged that they be increased. In no instance has the Committee suggested that the budget request for Indian programs and services be reduced.

Far too often, increases in Federal funds for the benefit of Natives have resulted in an expanded and unresponsive Federal bureaucracy rather than direct benefits to Native people. In response, Congress has implemented tribal recommendations regarding the need for greater local autonomy and flexibility in spending decisions as more fully set out below.

The Tribal Priority Allocations (TPA) mechanism has proven highly successful in authorizing the tribes to set spending priorities for governmental services so that, when faced with changing needs, they can reallocate TPA funds accordingly.

The TPA mechanism continues to enable Indian tribal governments to flexibly respond to local concerns and to provide governmental services such as child welfare and elder care programs, forestry, agriculture and range management, fire protection, adult vocational education training, and a host of other programs and services to those residing on Indian lands.

By focusing the bulk of BIA resources on TPA, the budget request continues the trend of directing greater amounts of resources to priorities identified by tribal governments for the provision of services. Tribal governments, closest to those they serve, are aware of their needs and how best to address them.

Similarly, beginning with the enactment of the *Indian Self-Determination and Education Assistance Act of 1975*, as amended, (the "1975 Act") there has been a gradual shift away from the Federal dominance in the administration of Indian

programs to one in which tribal governments assume the responsibilities of the United States for the provision of services and programs to reservation residents.

Through self-determination contracts and self-governance compacts, Indian tribal governments and tribal consortia have developed greater levels of administrative acumen and delivered higher quality services than were previously made available.

The Committee strongly supports the continued funding and expansion of tribal contracting and compacting under the 1975 act and urges that sufficient funds be provided to ensure its continued success including full funding of contract support costs.

#### **IV. Committee Recommendations**

**IV. A. Department of Interior - In General.** The request includes \$10.7 billion in funding for the Department of Interior, which is \$340 million (or 3.3%) *higher* than the FY2003 enacted level.

Funds for Indian school construction are proposed at \$292.6 million, the *same amount* requested in FY2003. A total of \$141.4 million is proposed for new school construction to replace seven (7) schools on the BIA's Priority List: Isleta Elementary School (NM), Navajo Preparatory School (NM), Wingate High School (NM), Pueblo Pintado School (NM), Mescalero Apache Elementary School (NM), Turtle Mountain High School (ND), and Enemy Swim Day School (SD).

The BIA school operations account is slated to receive \$528.5 million, an *increase* of \$6.8 million. Included in this amount is \$3 million requested for a fund for start-up costs for those tribes which assume operational control of BIA schools.

## **1. Bureau of Indian Affairs (BIA)**

**a. Operation of Indian Programs (OIP).** For the Bureau of Indian Affairs, the request includes \$2.314 billion, an *increase* of \$62 million over the FY2003 budget. Of this amount, \$1.9 billion is slated for the Operation of Indian Programs (OIP).

Within OIP, Tribal Priority Allocations (TPA) are proposed to receive \$777.641 million, an *increase* of \$2.1 million. The OIP account provides funding for core governmental functions including contract support costs to carry out contracts and compacts under the 1975 Act; housing repair funds for the Housing Improvement Program (HIP); road maintenance; BIA Trust Management Improvements; funds for Indian tribal courts; and funds for adult care facilities.

The contract support costs account is to receive \$135.3 million, an *increase* of \$2.1 million over FY2003. This funding acts as a critical incentive to encouraging an expansion of tribal contracting and compacting under the ISDEAA.

**b. Law Enforcement Activity.** Safe and crime-free environments are critical to improving the quality of life in Native communities and are central to any effort to attract capital and employment opportunities to strengthen Native economies. For the past 6 fiscal years, funding has been provided to the ongoing joint *Department of Justice - Department of Interior Law Enforcement Initiative*. The Committee encourages the President to continue funding this successful initiative.

The request includes \$171.15 million for law enforcement, an *increase* of nearly \$10 million over the FY2003 request.

Because of greater demands placed on tribal law enforcement the Committee encourages substantial increases for FY2004 with new funding increases targeted to additional law enforcement personnel, police vehicles, communications equipment, and staff detention services. The Committee encourages the increased inter-agency coordination for law

enforcement evidenced by the Law Enforcement Initiative.

The request proposes \$17.1 million for Tribal Courts, a modest \$13,000 *increase* over FY2003. In FY2001, in partnership with Indian tribes, the BIA collected Tribal court caseload information. Of the 176 Indian tribes who responded, they reported a backlog in excess of 61,345 cases. Because of the additional burdens placed on tribal courts, the Committee supports an *increase* of \$1 million in FY2004.

**c. Education Activity.** In addition to the Federal appropriation to fund the construction of Indian schools, the Committee anticipates legislation to authorize the issuance of bonds to raise capital for the construction of new schools and recommends \$30 million be set aside in FY2004 for this proposal.

The Committee notes the *modest increases* in funding for Tribally Controlled Community Colleges (TCCCs) of \$167,000 but notes that the request is actually some \$2 million *less than* the FY2002 enacted level. Because of the importance of TCCC's, the Committee urges that the account be funded at not less than \$42 million.

Because the United Tribes and Technical College (UTTC) and the Crownpoint Institute of Technology have demonstrated high levels of success in educating Native people, the Committee strongly recommends, at minimum, that funding for these schools be *restored* to FY2003 levels *plus* the cost of inflation.

Although the Tribally Controlled College or University Assistance Act authorizes \$6,000 per student, the budget only requests \$3,526 per student. The Committee supports *full funding* of \$6,000 per student.

For the Indian School Equalization Program (formula funds) the request seeks an *increase* of \$7.516 million for a total of \$354.29 million. Although the Committee supports the modest \$166,000 *increase* for student transportation, the Committee urges additional funding. The public school per-



mile average 6 years ago was \$2.97 per mile, yet even with this increase, BIA funded schools will only receive \$2.37 per mile. In FY2002, the BIA estimated that student transportation was underfunded by \$11 million. The Committee recommends full funding for student transportation, an *additional* \$10 million over the President's request.

This year, the BIA acknowledges that it only addresses 70% of need for the Administrative Cost Grants (AC Grants). Although the Committee is encouraged by the \$3 million requested increase, the increase would only bring AC Grant funding up to 75% of need. The Committee recommends AC Grant funding at \$63 million to meet 100% of need.

**d. Energy.** Energy resource development on Indian lands can provide tribes with substantial opportunities for economic development and job creation, as well as assist the nation as a whole by lessening our dependence on foreign energy.

While the Committee would prefer an increase in what is essentially level funding in TPA funds for both Natural Resources and Minerals and Mining, the committee strongly supports the \$2 million *increase* in Non-recurring Programs for grants to tribes to evaluate mineral resource potential on tribal trust and restricted lands, as well as the \$1 million request to help tribes expedite development of tribal regulations governing mineral leasing, permitting, and rights-of-way.

Because there are significant opportunities with regard to renewable resources, the Committee recommends that funds be used for the assessment of renewable energy sources such as wind and solar energy in addition to non-renewable resources to facilitate tribal participation in the Secretary's initiative on renewable energy.

## **2. Office of Special Trustee for American Indians**

In 1994, Congress enacted the *American Indian Trust Fund Management Reform Act*, 25 U.S.C. § 4001, *et seq.*, to bring required reforms to Indian trust assets, accounts, and

resources managed by the United States. Little or no progress in implementing the Act was made in the years immediately following enactment.

Beginning in 1997, through several oversight and legislative hearings, the Committee grew concerned with the pace and direction of planned trust management reforms in the Department and its bureaus. Since FY1998 hundreds of millions of Federal dollars have been appropriated to the Department for purposes of trust management reform.

Trust management continues to be the subject of great controversy, and a class action initiated in 1996 by beneficiaries of Individual Indian Money accounts entitled *Cobell v. Norton* (formerly *Cobell v. Babbitt*) continues to be litigated before Judge Lamberth of the U.S. District Court for the District of Columbia.

After nearly a year of intense consultation between the Department of Interior and the tribes, in late 2002, the Department sought and secured congressional approval to re-program some \$5 million to effect a proposed reorganization of the trust apparatus in the department.

Recognizing that substantially increased funding will be necessary in the next several years to complete the trust reform process, the budget proposal includes an *increase* of \$123 million for a total of \$274.6 million (an 82% increase) in funding for Federal trust programs under the direction of the Office of Special Trustee for American Indians.

The request includes \$130 million for historical accounting activities, an *increase* of \$112.5 million. The request also includes \$20.4 million to accelerate efforts in trust records administration, an *increase* of \$6.8 million.

In the short-run, the Committee looks forward to working with the Department and Indian tribes on reorganization matters.

The Committee strongly believes that the substantial

increases proposed in FY2004 funding for internal trust management reforms should not be viewed as justification for corresponding reductions in funding for *other* programs intended to fulfill the United States' responsibilities to Native people.

The Committee urges the Budget Committee and the Appropriations Committee to view funding for trust management reforms as separate and apart from funding made necessary by the need of the Federal government to defend the United States in the *Cobell* litigation. These costs include litigation and related costs accruing to the Departments of Interior, Justice and Treasury.

The costs of the litigation include actual dollar costs incurred but also include significant and negative effects to the Department of Interior and Bureau of Indian Affairs; significant and negative effects on the administration of tribal programs at the local level; and significant opportunity costs to the tribes, the Department and Congress.

Regarding *Cobell*, in the long-run the Committee strongly believes that alternatives to litigation ought to be pursued that will not result in the continued spending of hundreds of millions for accountants, lawyers, and consultants and others with little if any relief provided to the IIM beneficiaries.

In FY2004 and beyond, the Committee would prefer that funding priorities be targeted to those areas of trust reform that would most benefit from an intense Federal spending effort: land consolidation, probating Indian estates, and crafting a sterling Indian trust management system that brings the Department into compliance with the highest fiduciary standards.

With this in mind, the Committee is encouraged by the increase in the budget request for Indian Land Consolidation from \$10.98 million to \$21 million, an increase of more than \$10 million over FY2003 levels.

#### **IV. B. Department of Health and Human Services - In General.**

The request includes \$65 billion in funding for the Department of Health and Human Services (DHHS), a \$1.6 billion *increase* higher than the FY2003 Budget Request.

The DHHS budget requests total program spending authority by the Indian Health Service (IHS) of \$3.04 billion, an *increase* of \$90 million over FY2003 levels.

Included within that program authority is \$150 million for Diabetes Prevention and Treatment, an *increase* of \$50 million over FY2003 as provided in the *Fiscal Year 2003 Omnibus Appropriations Act*, Pub.L. 107-360.

In addition, the DHHS includes other programs for Native Americans including the Administration for Native Americans, the Substance Abuse and Mental Health Services Administration, and the Administration on Aging. These programs have been highly successful in addressing problems Native communities. The Committee strongly supports the continued funding and support of these programs.

Several DHHS agencies have developed cooperative and joint-venture initiatives with the IHS, including the National Institutes of Health (NIH) and the Centers for Medicare and Medicaid Services (CMS). These initiatives have provided significant benefits, such as the joint research projects on Diabetes between NIH and IHS, and the training programs provided by CMS to tribes and IHS facilities which increase their capacity to access third party billing sources.

The Committee strongly supports the maintenance and development of inter-departmental initiatives that increase the efficiency and effectiveness of programs and services to Native people.

##### **1. Indian Health Service (IHS)**

The request proposes \$2.89 billion for the Indian Health Service, an *increase* of \$40 million over the FY2003 level. Of that amount, \$2.5 billion is proposed for Health Services, an

increase of \$26 million over the FY2003 level, and \$387 million is proposed for Health Facilities, an increase of \$13 million over the FY2003 level.

**a. Health Services.** The Clinical Services account is proposed to be funded at \$1.99 billion, an increase of \$13.4 million over the FY2003 level. Within Clinical Services, the request for Hospitals and Health Clinics is \$1.2 billion, a decrease of \$17.4 million from the FY2003 level. The Committee strongly urges that \$17.4 million be restored to the Hospitals and Health Clinics account.

The request proposes \$493 million for Contract Health Services, an increase of \$18 million over the FY2003 request.

To offset some of the account increases, the request proposes eliminating 195 existing Full Time Equivalents (FTEs) with a projected savings of \$21 million. The FTEs targeted for elimination include administrative consolidations, outsourcing and "organization delayering". The request proposes to use the savings to add 255 new FTEs for new facilities, for an overall *net increase* of 60 FTEs.

To the degree that the request reflects more efficient management practices by replacing administrative positions with front-line health care positions, the Committee supports the request.

The request proposes an increase in pay costs of \$35.6 million, providing average pay raises of 2.1%. Pub.L. 108-7 provided for pay raises of 4.1% for civilian Federal personnel, and 4.7% for commissioned personnel. To meet the requirements of Pub.L. 108-7, the required increase in pay costs needed by IHS would be approximately \$73 million, \$38 million more than provided in the request. Similarly, the FY2003 appropriation did not fully fund IHS pay cost requirements under Pub.L. 108-7, leaving a *shortfall* of \$29.3 million.

The Committee anticipates that, to meet the statutorily required pay raises, the IHS is obliged to reduce the number

of FTEs. Given the size of the shortfall, the positions eliminated will inevitably come from front-line health care personnel, immediately impacting the quality of health care services provided. Therefore, the Committee recommends *full funding* for IHS pay costs, including the FY2003 shortfall, for a total of \$67.3 million.

The Committee is also aware that pharmaceutical costs continue to rise dramatically with the IHS reporting that pharmacy costs are the single greatest cost increase faced by the agency. The Committee recommends *an increase* of \$25 million in the FY2004 request to address this need.

Factoring in the required pay costs and increased pharmacy costs, the Committee strongly recommends that the Clinical Services account *be increased* by \$92.3 million above the request.

The Preventive Health account is proposed to be funded at \$108 million for FY2004, *an increase* of \$5.7 million. The request also provides: \$35.4 million for Health Professions, *an increase* of \$4.3 million; \$32 million for Urban Indian Health, the same level of funding as appropriated in FY2003; \$56.6 million for Direct Operations, a *decrease* of \$3.6 million from FY2003 appropriations; and \$271 million for Contract Support Costs, *an increase* of \$1.8 million over FY2003.

The Urban Indian Health program has not received a significant funding increase since the program was initiated. It is proposed with to be funded in FY2004 at \$32 million, level funding with FY2003. The fastest growing IHS service population areas are in urban areas, yet the proposed funding amounts to 1.5% of the IHS budget request.

Urban Indian organizations have demonstrated their ability to provide high quality health services on limited budgets. Without additional funding support it is unlikely that they will continue to be able to provide the same quality of services to their expanding service populations. Therefore, the Committee recommends that the Urban Indian

Health program be *increased* to \$48 million, a 50% increase.

The availability of contract support funding is the threshold financial question in a tribe's decision to assume management and control of Federal health programs under the *Indian Self Determination and Education Assistance Act*. The "tribalization" of health care services has proceeded apace since 1975 and now more than one-half of all IHS funding and programs are contracted or compacted by Indian tribes or tribal consortia.

The Contract Support Costs account is proposed to be funded at \$271 million, an *increase* of \$1.8 million over FY2003 appropriations. The request anticipates 25 new and expanded contracts in FY2004 yet only \$1.8 million will be available to support new and expanded contracts. The Committee strongly recommends that contract support costs be sufficiently funded to meet the needs of the 25 new and expanded contracts.

**b. Health Facilities.** The Budget Request includes \$387 million for Health Facilities, an *increase* of \$13.5 million over FY2003 levels. The request includes \$70 million to continue ongoing construction, a *decrease* of \$11.6 million from FY2003; \$47.3 million for maintenance and improvements, a *decrease* of \$2.1 million from FY2003; \$114 million for sanitation facilities construction, an *increase* of \$21 million over FY2003.

The Committee supports the increase in \$21 million for Sanitation Facilities Construction. However, the Committee cannot support the proposed decrease in Health Care Facilities Construction. The Committee is advised that the IHS 5 Year Priority Construction List contains **\$1.3 billion** in badly needed projects awaiting construction in Indian communities. With many facilities nearing the 100-year old mark, the Maintenance and Improvement account should contain funding to keep these facilities operational.

Therefore the Committee recommends that the Health Care Facilities Construction account be *increased* by a total of \$61

million, which will provide \$40 million for planning and initial construction of the next projects on the 5 Year Priority Construction List, \$10 million for small ambulatory projects, \$1 million for dental units, and \$10 million to continue the very successful joint venture initiative.

## **2. Other DHHS Programs.**

**a. Administration on Aging.** The request includes \$27.5 million to fund Title VI of the Older Americans Act. To date this program has not received sufficient funding to meet its mandate of providing services "comparable to those provided under Title III." The Committee recommends that funding for Title VI be *increased* \$30 million.

**b. Administration on Native Americans.** Universally acknowledged as a successful tool in assisting tribes and native communities develop and implement economic, environmental and cultural initiatives, the Administration for Native Americans (ANA) program is slated to receive \$45 million in FY 2004, funding level with FY2003. Because of its success, the Committee urges the request attempt to *boost funding* to \$48 million in FY2004.

## **IV. B. Agriculture and Related Activities.**

**a. Bureau of Indian Affairs.** The BIA supports Natives in developing conservation and management plans to protect and preserve natural resources on trust land, which includes over 46 million acres used for farming and grazing by livestock and game animals. The BIA provides technical assistance in Inventory and Research, Farm and Range Planning, Farmland Improvements, Rangeland Improvements, Rangeland Protection, Leasing and Permitting Services, Contract Monitoring, and Agriculture Extension.

The request proposes \$22.5 million for agriculture services. A \$2 million *increase* is proposed for agriculture services to be used to complete soil and range inventories and conservation management plans on an additional 1 million acres of trust lands per year. The Committee supports this increase



as soil and range inventories are necessary to provide data for use in developing conservation and management plans to protect and preserve natural resources on Indian trust lands.

The BIA's forestry program manages or assists Indian tribes with the management of their forests consistent with tribal goals and objectives identified in forest management plans or integrated resource management plans. Indian forests cover over 17 million acres and are located on 260 Indian reservations in 26 states. Forest management activities consist of forest inventory and management planning including the development of Integrated Resource Management Plans, forest products marketing, timber sale management, forest protection, woodland management, forest productivity enhancement, and intensive forest development procedures, to ensure the sustainable management of Indian forests.

The request proposes \$24.9 million for forestry services, an *increase* of \$1.6 million over FY2003. The Committee supports the increase which is targeted for forest management activities to enhance forest product harvesting.

**b. Department of Agriculture (USDA).** With agriculture as the second largest employer in Indian communities, the USDA plays a fundamental role in aiding Indian economic and community development.

The Committee is therefore concerned by the \$378 million *reduction* in the overall request for the Farm Service Agency, and would like to see the American Indian Livestock Feed Program restored to the FY2002 level of \$12 million.

The Committee also supports continued funding of the Rural Community Advancement Program (RCAP), Water and Waste Disposal Direct Loans and Grants at the FY2002 levels for Native Americans and Alaska Natives and encourages funding for Indian country while USDA reviews the need for electric and telecommunications services. The Committee is especially concerned by the \$131 million *reduction* in the request for RCAP, and would like to see some of this funding request restored.

The Budget Request proposes to improve water quality and wetland protection through voluntary measures by targeting technical and financial assistance to farmers and ranchers who operate in the watersheds with the greatest needs. The Committee encourages the USDA to also work with Indian tribes to ensure that Indian tribes and tribal farmers and ranchers also have access to technical and financial assistance.

The Committee encourages *full funding* for the Food Stamp Program; the Child Nutrition Program; the Women, Infants and Children Program; and the Food Distribution Program on Indian Reservations. The Committee is encouraged by the Tribal College grant increase from the current level of \$50,000 per institution to \$73,000, and urges that the Department continue moving toward the full authorization of \$100,000 enacted in the 2002 Farm Bill.

**IV. C. Department of Education - In General.** The request for the Department of Education (DoEd) provides over \$907 million for a wide range of programs to address the unique circumstances and educational needs of Native people. These programs begin addressing these needs in infant and preschool ages, and continue through vocational and higher education institutions.

The DoEd is also responsible for administering the Impact Aid program which ameliorates the impact of non-taxable lands on local communities and local education agencies (LEAs). These lands include Federal lands and Indian lands.

**1. Elementary and Secondary Education.** In January 2002, the *No Child Left Behind Act* (the "Act") was signed into law by President Bush. The Act includes increased accountability for student performance, increased state, tribal and local flexibility, and enhanced parental choice.

**a. DoEd - Indian Education Programs.** The request for basic Indian Education Programs is \$122.4 million. The request includes \$97.1 million for Indian Education formula Grants to Local Education Agencies.

The request continues the Special Programs for Indian Children, which provides \$10.8 million for demonstration grants that promote school readiness for Indian preschool children, and \$9.1 million to continue the American Indian Teacher Corps initiative.

The request also proposes to continue the National Activities initiative at \$5.2 million. This initiative is a comprehensive research agenda that provides information on the educational status and needs of Indian children, and a scientifically-based research plan identify the most effective proposals for meeting the special needs of these children. The Committee strongly supports these spending requests for Indian Education Programs.

**b. New or Expanded Programs.** In addition, the Act created new programs or expanded existing programs administered by DoEd that contain funding set-asides for BIA or tribal schools, including the following programs:

a. Under Title I of the Act, supplemental education funding for high-poverty areas is requested, of which \$85 million is set aside for the BIA.

b. BIA-funded schools will receive approximately \$5.25 million in set-asides from the Reading First State Grants program request.

c. Indian tribes and tribal organizations will receive \$2.6 million for Even Start programs under the DoEd's request.

d. The request would provide the BIA with an allocation of almost \$14.2 million from the Improving Teacher Quality State Grants.

e. For Special Education, the request would allocate \$82.5 million for Special Education Grants, and \$5.5 million for Grants for Infants and Families to the BIA.

The Committee strongly supports the spending requests for these supplementary education programs.

**2. Impact Aid.** The Basic Support Payments provides assistance for general operating expenses to many state funded local education agencies (LEAs) that educate Indian children. The request provides nearly \$476.9 million for the impacts of Indian lands, the same funding level provided in the FY2003 appropriation.

The Committee strongly supports the Basic Support Payments FY2004 request.

The Impact Aid request would also provide \$21 million for Payments for Children with Disabilities to assist Federally-affected school districts. The request maintains the same level of funding as provided in the FY2003 appropriation. The Committee strongly supports the Payments for Children with Disabilities FY2004 request.

School districts impacted by Indian lands will also be eligible for \$27 million in competitive Impact Aid Construction grants. The request maintains the same level of funding as provided in FY2003. The Committee strongly supports the Impact Aid Construction FY2004 request.

**3. Higher Education and Vocational Institutions.** The request proposes \$19 million for the Strengthening Tribally Controlled Colleges and Universities program, a decrease of \$4 million from the FY2003 level. The request provides \$4 million for the Strengthening Alaska Native and Native Hawaiian-Serving Institutions program. The decrease will seriously impact Tribal Colleges as two new tribal community colleges are scheduled to begin operations in FY2004.

The Committee strongly recommends that the Strengthening Tribally Controlled Colleges and Universities program be *increased* by \$8 million to \$27 million, the same funding level as provided in FY2003.

The Committee also recommends that the level of funding

for the Strengthening Alaska Native and Native Hawaiian-Serving Institutions program be *increased* to \$6.5 million, the same level of funding as provided in FY2002.

Under authority of the *Perkins Vocational and Technical Education Act of 1998*, the DoEd requests \$6.5 million to provide grants to Tribally Controlled Post-Secondary Vocational and Technical Institutions. The Committee recommends that this program be funded at \$8 million, an *increase* of \$1.5 over the Budget Request.

**4. Other programs.** The request proposes \$2.7 billion for the Vocational Rehabilitation program. The program would set-aside \$27.6 million of the request for grants to Indian tribes. The Committee strongly supports this funding request.

The FY2004 Budget Request of \$422 million for the Safe and Drug-Free Schools and Communities program also contains set-asides for BIA-operated or BIA-supported schools, and Native Hawaiian school programs. The set-asides would provide \$4.75 million to the BIA and \$844,000 for Native Hawaiian programs. The Committee strongly supports this funding request.

#### **IV. D. Law Enforcement and Public Safety - Department of Justice**

The Committee urges that Indian country be considered in the President's Counter-Terrorism Enhancements and Border Security initiatives. According to the BIA, there are 35 tribes with jurisdiction over lands adjacent to the Canadian or Mexican borders and jurisdiction over waters directly accessible by boat from the Canadian or Mexican borders.

The lands comprise over 260 miles of a total 7,400 miles of international borders patrolled by the United States. In addition, many tribes have strategic assets such as dams and impoundments, oil, gas, and electrical facilities, and other vulnerable infrastructure located on or near tribal lands. The tribes have law enforcement jurisdiction over their own lands.

The President's Budget Request provides zero funding for the construction of tribal detention facilities in FY2004. Indian country will be negatively impacted by the proposed elimination of funding for tribal detention facilities.

Many of the 80 or so tribal detention facilities are at the end of their useful life, and a number have been condemned by Federal or tribal courts. The total estimated backlog is approximately \$400 million. In FY2003, \$5 million was provided to construct tribal detention facilities. The Committee recommends that \$30 million be provided for construction of tribal detention facilities.

The request proposes to *decrease* Community Oriented Policing Services (COPS) funding for Indian country from \$30 million provided in FY2003 to \$25 million for FY2004. The Committee encourages additional funding over FY2003 for this essential program. Today, there are 1.3 law enforcement officers per 1,000 citizens in Indian country, compared to 2.9 law enforcement officers per 1,000 citizens in non-Indian communities. The Committee anticipates that greater burdens will be placed on Indian country law enforcement as tribal governments play an integral role in securing America's borders, her citizens, and physical infrastructure.

The request proposes to provide \$5.9 million for tribal courts in FY2004, a *decrease* of \$2 million from the amount provided in FY2003. Tribal court funds are used to develop, enhance, and operate judicial systems, to enhance civil and criminal justice administration on Indian lands and to encourage implementation of the *Indian Civil Rights Act of 1968*.

*Additional funding* is needed to address the increased caseload on tribal court dockets resulting from increased arrests and rising crime, to encourage development of and investment in Indian lands by Indians and non-Indians, and to assist Federal courts in lessening the ever increasing Federal district court caseload. The Committee urges a *substantial increase* in funding for tribal courts.

The Committee continues to support existing programs and funding for victim / witness coordinators within the Federal Bureau of Investigation and evidence and forensic examinations; funding for U.S. Attorney positions to investigate and prosecute crimes in Indian country; funding for drug testing, treatment, and diversion programs; funding for Youth Mental Health and Behavior Problems; and funding for sexual assault nurse examiner units. The Committee strongly encourages that FY 2004 levels be *increased* for law enforcement activities sufficient to address these problems.

#### **IV. E. Housing and Community Development - Department of Housing and Urban Development**

The request proposes a \$31.3 billion budget for the Department of Housing and Urban Development (HUD), a \$400 million *increase* over FY2003 levels.

Studies have documented that housing conditions in Native America are the worst in the nation, with 32.5% of Native Americans living in overcrowded or physically inadequate housing conditions, and 26% considered very-low income. The current level of demonstrated need for housing stock in Native communities is \$1.0 billion, up from \$972 million from just a few years ago. This translates into an immediate need of at least 225,000 units, which does not include the estimated 52,000 units currently in need of renovation and 19,000 needing replacement. <sup>4</sup>

The rural nature of most Native communities translates into higher than average housing costs. Many reservations lack basic infrastructure, with tribal governments being obliged to make large investments in water lines, sewage and sanitation facilities, and paved roads. <sup>5</sup>

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<sup>4</sup>Based on the Coalition for Indian Housing and Development, Submission to the Millennial Housing Commission, June 29, 2001.

<sup>5</sup>The *Indian Health Care Improvement Act Amendments* (P.L. 94-437) stated that the Indian Health Service has the primary

Furthermore, the remote and isolated nature of these communities means more costly supplies, labor and shipping expenses.

Access to financing – private sector capital and mortgage lending – is another barrier. Because trust land cannot be used as collateral, Native Americans have difficulty obtaining home mortgages.

Even Native Americans with financial wherewithal have to rely upon Federal housing programs because of the lack of alternative financing in Indian country or because a limited private housing market makes housing prohibitively expensive.

#### **1. The Native American Housing Assistance and Self-Determination Act (NAHASDA).**

The request for the Native American Housing Block Grant is \$646.6 million which level funding with FY2003.

This sum includes \$1 million, a decrease of \$4 million from the FY2003 level, for the Indian Housing Loan Guarantee which will secure an additional \$27 million in loan guaranty authority and approximately \$200 million in total private loans. The sum also includes the Title VI Tribal Activities Loan Guarantee program which has been proposed for a *reduction* from \$2 million to \$1 million in FY2004.

NAHASDA authorizes direct block grants to tribal governments or tribally-designated housing entities to develop, maintain, and administer safe and affordable housing for low-income Native Americans. NAHASDA also encourages creative financial options that allow tribes to leverage public and private funds. Tribal housing needs remain disproportionately high compared with their housing block grant. As a result, tribal housing entities are barely able

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responsibility and authority to provide safe and adequate water supply systems and sanitary sewage waste disposal systems in Indian homes.



to maintain their housing status quo and have had difficulty making headway to addressing their members' overall need.

## **2. Native Hawaiian Housing.**

The request includes \$10 million for the Native Hawaiian Housing Block grant program. The request includes \$1 million for the Native Hawaiian Home Loan Guarantee Fund.

## **3. Community Development Block Grants (CDBG).**

The request for the Indian set-aside of the Community Development Block Grant Program is \$72.5 million which is level funding with FY2003. Tribes use these grants for reservation infrastructure and economic development.

## **4. Proposed Emergency Fund.**

Unlike HUD's public housing programs, there is no emergency fund for Native American housing. Last year, the Committee learned that toxic black mold had infested homes on at least 17 Indian reservations which forced emergency evacuations of many homes. The cost of remediation has not been calculated, however three North Dakota tribes estimate a cost of \$20 million to address their mold problems.

To address this problem, in 2002 the Committee authorized a comprehensive black mold study and anticipates receiving the report back in this session of Congress. In addition, the Department has represented to the Committee that tribes are currently eligible to apply for financial assistance under the Lead-Based Paint program to address the problem of toxic mold in their homes.

## **5. Eliminated Programs.**

The request includes no funding for the Rural Housing and Economic Development program, which eventually was funded at \$25 million in FY2003. This program is well-suited for Indian communities given all of the problems of rural America and the difficulty with economic development on reservations.

#### **IV. F. Housing Loans-Department of Veterans Affairs**

In 1992, Congress established the Native American Veterans Housing Loan Program to provide direct loans to American Indians, Alaska Natives, and Natives Hawaiians living on Federal trust lands. These loans are available to purchase, construct, or improve homes to be occupied as a veteran's residence. The request includes \$563,000, a slight decrease below the FY2003 level.

#### **IV. G. Commercial Activities - Department of Commerce**

The Department of Commerce includes specific programs which benefit Native communities. One such program is the Economic Development Administration (EDA). The Budget Request proposes a \$16 million *increase* in funding for EDA for a total of \$364 million.

The request provides \$29 million for the Minority Business Development Agency (MBDA), which works to facilitate access to resources for the minority business community in order to help minority businesses. Native American Business Development Centers are eligible for these funds.

The request proposes to eliminate the Technology Opportunities Program (TOP), which provides grants for rural and under-served communities for advanced telecommunications technologies. In FY2001, TOP funding was \$45.4 million, which included \$4.2 million for Indian Country. In FY2002, TOP funding was \$15.5 million. In FY2003 the program was targeted for elimination.

Telecommunications needs in Indian country are different from those in the rest of the nation due to the poor state of existing infrastructure in most Native communities. In 1995, it was estimated that 53% of Indian homes on reservations did not have telephones, compared to only 5% of all other homes in the United States. Even in rural locations, only 9% of homes lacked telephones. In a 1999 survey conducted by the EDA, 13 of 48 tribes reported that they lacked "911" service and only 8 had a technology infrastructure or telecommunications plan.

The Committee strongly recommends that the request be increased to include funding for the recently-enacted *Native American Business Development, Trade Promotion and Tourism Act*, Pub.L. 106-464, and the *Indian Tribal Regulatory Reform and Business Development Act*, Pub.L. 106-447.

#### **IV. H. Labor Activities - Department of Labor**

Unemployment rates in Native communities continue to hover in the 43-45% range compared to the national rate of 6%.

The request proposes to combine and reform existing Federal job training programs. Currently, there are 48 Federal job training programs administered by 10 Federal agencies. The Administration proposes to consolidate or eliminate 20 programs so that in FY2004, there will be 28 programs administered by 10 Federal agencies. Within the Department of Labor (DOL), there are 17 job training programs for dislocated workers, adult employment and training, and youth activities.

For FY2004, the request would eliminate or consolidate 7 job training programs and transfer 1 program to the Department of Veterans Affairs, so that a total of 9 job training programs would be administered by the DOL. The request also proposes to eliminate or consolidate 4 programs within the Department of Education that affect adult education, vocational education and individuals with disabilities.

Within the Department of Interior, the request proposes to consolidate or eliminate 9 job training programs that affect American Indians and Alaska Natives. Further elimination or consolidation of programs under the Workforce Investment Act is expected in the FY2004 budget.

American Indians, Alaska Natives and Native Hawaiian youth and adults are eligible to participate in the Comprehensive Services program of the Workforce Investment Act (WIA). In FY2003, this program received \$55.3 million and the FY2004 request provides a \$1 million increase for the WIA to \$56 million.

In FY2003, the tribal Supplemental Youth Services program under WIA received \$16.5 million. This program benefits youth in reservation areas, Oklahoma, Alaska and Hawaii, who are in or will soon enter the workforce. The FY2004 request is \$15 million, a \$1.5 million decrease.

The Youth Opportunity Grant benefits Indian tribes in numerous states. As in FY2003, the request proposes elimination of this program. The Committee recommends funding this program at the FY2002 level.

The Welfare to Work grants provided funding in 1998 and 1999, to be expended for up to 5 years after the funds were provided. Many tribes operating Welfare to Work grants have already expended their funds. The Committee anticipates proposed legislation to consolidate the Native Employment Works program with the Welfare to Work program. The amount needed for this proposal is estimated at \$37 million.

#### **IV. I. Transportation Activities - Department of Transportation**

The FY2004 budget totals \$53.2 billion, an overall increase of \$1.1 billion from FY2003. The request seeks \$275 million, down from \$290 million in FY2003, for the Indian Reservation Roads (IRR) program.

The IRR program's purpose is to provide safe and adequate transportation and access to public roads near and within Indian reservations, Indian trust land, restricted Indian land, and Alaska Native villages. Funding may be used to construct and improve roads, bridges, and transit facilities leading to, and within, Indian reservations or other Indian lands.

Approximately 25,000 miles are under the jurisdiction of the Bureau of Indian Affairs and tribes, the majority of which were rated to be in "poor condition."

Although Indian Reservation Roads comprise 2.63% of the roads in the Federal Aid Highway program, Indian roads receive

less than 1% of Federal road aid. As a result, these roads remain in poor and unsafe condition, leading to a fatality rate that is more than 4 times the national average.

Inadequate transportation infrastructure has a negative impact on emergency and medical services, law enforcement response time and capabilities, and economic development efforts.

#### **IV. J. Environmental Activities - Environmental Protection Agency (EPA)**

The Committee is concerned about the proposed cuts and decreases to environmental grants to tribes and states for the clean air and clean water programs. In particular, the Committee is concerned about the proposed decrease in the Clean Water State Revolving Fund (CWSRF), which helps tribes and states meet their significant infrastructure needs by providing funds to construct drinking water and wastewater treatment facilities. These funds are an important tool to both tribes and states in assisting communities to achieve [provide] clean drinking water. The President proposes to decrease this fund from \$1.4 billion to \$1.2 billion [\$1.2 billion to \$850 million - a 39% decrease from the FY02 funding level of \$1.4 billion].

Of the CWSRF, tribes only receive one and one-half percent of the funds, which amounts to \$18.2 million [\$12.8 million]. The level of need in Indian Country, however, is far greater than this amount. The EPA and the Indian Health Service estimate that it will cost more than \$650 million to correct inadequate wastewater treatment systems or to construct systems where none currently exist.

The Committee is also concerned that the request does not include an increase in the amount available in the Drinking Water State Revolving Fund (DWSRF) which is used to help tribes upgrade and modernize drinking water systems.

As for Alaska Native water programs, the Committee is concerned that there has not been a request for an increase

even though the EPA estimates that more than 20,000 homes in Native villages lack basic sanitation facilities.

The Committee strongly supports the *increase* of \$5 million to the general assistance grants, which are used by tribal governments for a range of environmental regulatory activities. The Committee supports the *increase* of \$5.5 million to prevent pollution at the local level and to study environmental conditions in Indian country since part of this money will go to the American Indian Environmental Office, which serves as EPA's principal liaison with Indian country.

This increase supports the goal of establishing an environmental presence in Indian Country. The Committee also supports the PART assessment that the Indian General Assistance Program should develop long-term performance measures that focus on environmental outcomes, rather than processes.

#### **IV. K. Energy Sources - Department of Energy**

The Committee supports the proposed 20%- to \$11.1 million in FY2004 - increase in the Weatherization Assistance Program but suggests that Congress look at methods to assure tribal participation in the grant program since the current program funding is provided to states or through state energy offices.

#### **IV. L. Energy Sources - Department of the Defense**

The Committee is working on a tribal energy initiative to encourage energy development on Indian lands. This includes developing tribal partnerships with Federal agencies, including the Department of Defense.

Since the Department of Defense is the largest consumer of energy in the U.S. government, the Committee believes there is an excellent opportunity for tribes to provide power to Department of Defense facilities, installations, and ranges to assist the Department in meeting government agency's obligations to purchase renewable energy and to contribute to the energy security needs of the Department. Accordingly, the

Committee may request funding to implement tribal/DOD energy partnerships.

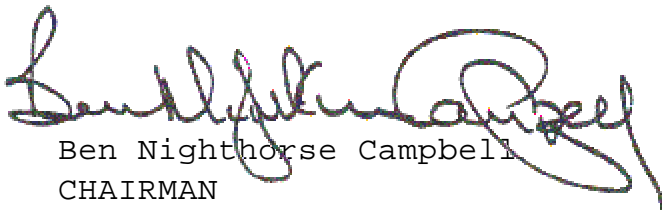
#### V. COMMITTEE CONCLUSIONS

On March 11, 2003, the members of the Committee on Indian Affairs favorably adopted this letter of recommendations on the budget views and estimates.

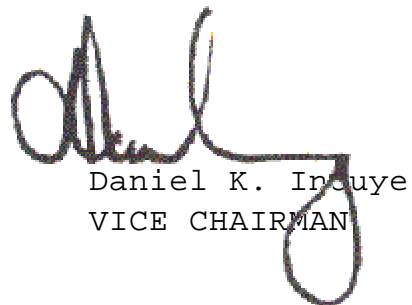
In approving this letter, however, the members of the Committee want to make clear that the Committee reserves the right to supplement this letter with the CRS memorandum on Federal spending trends when it becomes available.

The Committee appreciates the opportunity to provide this information on the President's FY 2004 Budget Request for Indian-related programs to the Committee on the Budget and very much looks forward to working with the Budget Committee in the coming year.

Sincerely,



Ben Nighthorse Campbell  
CHAIRMAN



Daniel K. Inouye  
VICE CHAIRMAN